

Press ReleaseNational Labor Relations Board

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New Board ratifies the General Counsel's litigation authority in 2008-09 Also ratifies administrative and personnel actions from that period

For 27 months, from January 2008 through April 5, 2010, the National Labor Relations Board operated with just two members. Its authority to issue decisions during that period was challenged, and on June 17, 2010 the Supreme Court decided in *New Process Steel v. NLRB* that the two-member Board lacked such authority. In the wake of that decision, and in order to remove any lingering questions, the newly constituted five-Member Board has taken the following actions:

First, it has ratified the December 2007 temporary delegation to the Agency's General Counsel of all authority on court litigation matters that would otherwise have required authorization of the Board. Second, it has ratified all personnel, administrative, and procurement actions taken by the two Members during the 27-month period, including but not limited to appointments of Regional Directors, Administrative Law Judges, and Senior Executives.

Specifically, with respect to court litigation, the 2007 delegation gave "the General Counsel full and final authority on behalf of the Board to initiate and prosecute injunction proceedings under Section 10(j), or Section 10(e) and (f) of the National Labor Relations Act, contempt proceedings pertaining to the enforcement of or compliance with any order of the Board, and any other court litigation that would otherwise require Board authorization; and to institute and conduct appeals to the Supreme Court by writ of error or on petition for certiorari."

The 2007 delegation was made knowing that the Board would soon be reduced to two members. The authority was automatically revoked when additional members joined the Board in April 2010.

In order to remove any question about the General Counsel's authority to act during that 27-month period, the current five-member Board ratified the delegation on Friday. In a statement, the Board explained, "Although we believe that the court litigation delegation has always been

valid, this ratification is intended to remove any question that has arisen or may arise regarding this delegation. Accordingly, the Board hereby ratifies the court litigation authority of the General Counsel described in the December 28, 2007 delegation."

In addition, on Wednesday the five-member Board ratified the administrative and other actions of the two-Member Board, issuing the following statement:

"Although we believe that all the administrative, personnel and procurement matters the Board acted on during this time were valid and appropriate, in an abundance of caution, with a full complement of five Board Members, we now ratify all actions taken and/or approved by the two-Member Board between January 1, 2008 and April 5, 2010. This ratification is intended to remove any question that may arise regarding this period during which the Board was reduced to two Members."

The National Labor Relations Board is an independent federal agency vested with the power to safeguard employees' rights to organize and to determine whether to have unions as their bargaining representative. The agency also acts to prevent and remedy unfair labor practices committed by private sector employers and unions.

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